

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL 675 OF THE UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING & PIPE FITTING INDUSTRY OF THE
UNITED STATES & CANADA

and

Case 20-CB-251372

RPS MECHANICAL, INC.

ORDER¹

The Respondent's request for special permission to appeal from Administrative Law Judge Eleanor Laws' July 30, 2020 Order directing the hearing to be conducted by videoconference is granted. On the merits, the appeal is denied.

The Respondent argues that a videoconference hearing is not permitted under Section 102.35(c) of the Board's Rules and Regulations and that such a hearing would be without all of the safeguards required by that Section. The Board has found that the ongoing COVID-19 pandemic establishes good cause based on compelling circumstances for taking video testimony under Section 102.35(c). *William Beaumont Hospital*, 370 NLRB No. 9, slip op. at 1 (2020); *Morrison Healthcare*, 369 NLRB No. 76, slip op. at 1 (2020). Moreover, we have found that because Section 102.35(c) pertains to hearings in which a single witness testifies via video conference in an otherwise in-person hearing, the strictures of that Section are informative but not controlling when a hearing is conducted entirely by videoconference. *William Beaumont Hospital*, 370 NLRB No. 9, slip op. at 1; *Morrison Healthcare*, 369 NLRB No. 76, slip op. at 1 fn. 2.

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

A video hearing can also provide for the observation of witnesses for the purpose of credibility determinations, as well as adequately address other due process concerns. *EF International Language Schools, Inc.*, 363 NLRB No. 20, slip op. at 1 fn. 1 (2015), enf'd. 673 Fed. Appx. 1 (D.C. Cir. 2017). Therefore, we find that the Respondent's speculative concerns are premature and may be raised with the judge in the first instance if warranted, or on exceptions to the Board pursuant to Section 102.46 of the Board's Rules and Regulations, in the event it receives an adverse ruling. Under these circumstances, we find that the Respondent has failed to demonstrate that the judge abused her discretion.

Dated, Washington, D.C. September 4, 2020

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER